

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re: §  
§ CASE NO. 10-36791-KKB-11  
HITECH FIRE DETECTION CORPORATION §  
§ Chapter 11  
Debtor §

**TEXAS COMPTROLLER'S RESPONSE TO EMERGENCY MOTION  
TO USE CASH COLLATERAL**

The Texas Comptroller of Public Accounts ("Comptroller"), appearing through the Texas Attorney General's Office, responds as follows to the Debtor's Motion for Interim Order Authorizing the Debtor's Use of Cash Collateral, Etc. (the "Cash Collateral Motion"):

1. The Cash Collateral Motion and the Interim Order submitted on such Motion seem to assume that Green Bank has a first priority security interest in all funds held by the Debtor. The order includes a statement that "Green Bank is also secured by and has offset rights in the monies in the Debtor's deposit accounts and has assigned interests in the monies in the lockbox at Green Bank." The order allows Green Bank to apply \$9,944.41 in the lockbox to reduce the Debtor's debt to Green Bank.

2. In conducting its business, the Debtor collects sales taxes from customers. In recent months, the Debtor has averaged between \$15,000 and \$20,000 of sales tax collections per month. The Debtor filed tax returns reflecting sales tax liability for May and June, 2010, but failed to pay taxes shown to be due on those returns. The Debtor's July 2010 taxes and return will be due on August 20, 2010. The Comptroller estimates the Debtor's prepetition sales tax liability to be approximately \$65,000.

3. Texas sales taxes are trust funds that belong to the Comptroller, pursuant to Texas Tax

Code § 111.016. Al Copeland Enterprises, Inc. v. Texas (In re Al Copeland Enterprises, Inc.), 991 F.2d 233, 237 (5th Cir. 1991); In re Gulf Consolidated Services, Inc., 110 B.R. 267, 268 (Bankr. S.D. Tex. 1989). Such trust funds do not belong to the Debtor, do not (pursuant to Bankruptcy Code § 541(d)) constitute property of the estate, and do not constitute the collateral of Green Bank or any other secured creditor. In re Koppinger, 113 B.R. 588 (Bankr. D. N.D. 1990)(bank's security interests did not attach to state tax trust funds). To the extent Green Bank, through a lockbox account or other means, has applied Texas sales tax trust funds against loan balances owed by the Debtor, the Comptroller reserves the right to pursue recovery of such taxes, plus penalties, interest, court costs and attorneys' fees, from Green Bank. Rights and remedies against the Debtor's responsible officers are also reserved and not waived.

4. As the owner of trust funds in the Debtor's possession, the Comptroller is entitled to adequate protection under Bankruptcy Code § 363(e) for its property. The Comptroller hereby requests such protection, as follows:

(i) Any order entered on the Cash Collateral Motion should provide that the Comptroller's rights to seek recovery of its tax trust funds from any party are not affected by the order.

(ii) The Debtor should be required to segregate and pay over to the Comptroller all sales taxes collected post-petition, including sales taxes collected along with prepetition receivables that may constitute collateral of Green Bank.

(iii) The Debtor should be ordered, as 28 U.S.C. § 960 requires, to pay to the Comptroller when due all sales taxes arising from post-petition sales and to file when due all tax returns relating to such taxes.

Wherefore, the Comptroller requests relief as set forth above and any additional relief to which the Comptroller may be entitled.

Respectfully submitted,

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ATTORNEYS FOR THE TEXAS  
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**CERTIFICATE OF SERVICE**

I certify that on August 13, 2010, a true copy of the foregoing was served by the method and to the following parties as indicated:

By First Class Mail:

HiTech Fire Detection Corporation  
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